

ORIGINAL



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March 1, 2000

99-3595-TL

Ms. Ann Cole, Clerk
State of Florida
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Re: Calvin "Bill" Wood v. GTE Florida Incorporated
DOAH Case No. 99-3595, 990861-TL

Dear Ms. Cole:

Please find enclosed an original and one copy of GTE Florida Incorporated's Proposed Recommended Order for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2617.

Sincerely,

___	AFB
___	APP
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Kimberly Caswell
KC:tas
Enclosures

A part of GTE Corporation

DOCUMENT NUMBER-DATE

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FROM: REGISTRATION REPORTING

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CALVIN "BILL" WOOD,)	
Petitioner,)	DOAH Case No. 99-3595
)	990861-TL
vs.)	
)	
GTE FLORIDA INC.,)	
Respondent.)	

GTE FLORIDA INCORPORATED'S PROPOSED RECOMMENDED ORDER

GTE Florida Incorporated (GTE) asks the Judge to adopt this Proposed Recommended Order.

STATEMENT OF THE ISSUES

The issue in this case is whether GTE has issued proper credits to Petitioner Wood for the time during which his telephone service may have been interrupted.

PRELIMINARY STATEMENT

On December 30, 1997, Mr. Wood filed a complaint with the Florida Public Service Commission, alleging problems receiving calls. On August 17, 1999, the Commission issued an Order referring Mr. Wood's Complaint to the Division of Administrative Hearings (DOAH) for a fact-finding hearing. On December 8, 1999, a formal administrative hearing was held before William F. Quattlebaum, Administrative Law Judge.

FINDINGS OF FACT

1. On December 30, 1997, Petitioner Wood filed a complaint with the Florida Public Service Commission. He alleged problems receiving calls and that the phone did not ring. (PSC Ex., Consumer Request No. 1990221 ("Consumer Request"), at 1.) After filing his complaint, Mr. Wood repeatedly contacted the PSC and GTE to complain of

service problems. The chief focus of these continued complaints was Mr. Wood's alleged inability to receive calls, particularly calls from his neighbor, Mr. Perry. Again and again, Mr. Wood complained that Mr. Perry could not reach him by telephone. (See, e.g., GTE Ex., Item 1, Staff's July 15, 1999 Recommendation ("Staff Rec.") at 2; PSC Ex., Consumer Request; PSC Ex., Letter from C.W. Wood to GTE, Feb. 3, 1998; PSC Ex., Letter from C.W. Wood to PSC, March 25, 1998; PSC Ex., Letter from C.W. Wood to attn. of L. Fulwood, PSC, Apr. 6, 1998; PSC Ex., Letter from C.W. Wood to Ms. Hendrix [sic], Apr. 24, 1998; PSC Ex., Letter from C.W. Wood to Sen. J. Laurent, May 21, 1998; PSC Ex., Letter from C.W. Wood to B. DeMello, PSC, June 29, 1998; PSC Ex., Letter from C.W. Wood to S. Stokes, PSC, June 3, 1999; Wood Ex., Letter from C.W. Wood to Sen. J. Laurent, June 4, 1998; Tr. v. 2, 28-29, 76.)

2. In response to Mr. Wood's December 30, 1997 complaint, GTE indicated that lightning may have caused intermittent problems with Mr. Wood's service, and that GTE planned to replace the cable serving Mr. Wood. (GTE Ex., Item 4, Letter to Mr. Richard Durbin, PSC, from Debby Kampert, GTE, Jan. 15, 1998 ("Jan. 15, 1998 Kampert-Durbin Letter.") GTE gave Mr. Wood a \$1.78 credit for time out-of-service and, to foster goodwill, a \$25.00 service performance guarantee (SPG). Both appeared on Mr. Wood's February 1998 bill. (GTE Ex., Item 5, E-mail from D. Kampert, GTE, to S. Stokes, PSC, May 26, 1999 ("May 26, 1999 Kampert-Stokes E-mail"); GTE Ex., Staff Rec. at 1-2.)

3. On February 11, 1998, in another effort to resolve Mr. Wood's complaint, GTE made additional repairs to Mr. Wood's drop wire and connection. GTE also advised Mr. Wood that his customer-provided equipment was defective. Mr. Wood agreed to replace it. (Staff Rec. at 2; GTE Ex., Item 3, Letter from D. Kampert to R. Durbin, PSC,

Feb. 20, 1998 (“Feb. 20, 1998 Kampert–Durbin Letter”).)

4. On February 12, GTE made a follow-up visit to Mr. Wood’s home. Mr. Wood suggested that the technician, Mr. Keiser, check with Mr. Perry about his alleged problems completing calls to Mr. Wood. Mr. Keiser did so and determined that Mr. Perry was dialing the wrong number for Mr. Wood. Nevertheless, to foster goodwill, GTE gave Mr. Wood another \$25 service performance guarantee on his March 1998 bill. (GTE Ex., Item 5, May 26, 1999 Kampert-Stokes E-mail; GTE Ex., Item 3, Feb. 20, 1998 Kampert-Durbin Letter; GTE Ex., Staff Rec. at 2; PSC Ex., Letter from W. Talbott to C.W. Wood, June 1998.) In addition, GTE later gave Mr. Perry a new big-button telephone, which GTE technicians delivered to Mr. Perry and installed at his home. (Tr. v. 1, 170-71; PSC Ex., Consumer Request, at 2; PSC Ex., Letter from C. W. Wood to J. Plescow, PSC, Aug. 18, 1998 (“Aug. 18, 1998 Wood-Plescow Letter”).) GTE also provided Mr. Perry with free speed-dialing service, and GTE technicians personally instructed Mr. Perry in its use. (Tr. v. 1, 170-71.)

5. On February 26, 1998, GTE installed new cable to serve Mr. Wood, but Mr. Wood was not cut over to the new cable because his serving cable pairs were defective. On February 27, 1998, Mr. Keiser left a message on Mr. Wood’s answering machine, informing him that bad weather conditions would delay clearing of the defective cable pairs. (GTE Ex., Item 2, Letter from D. Kampert to R. Durbin, Apr. 17, 1998. (“Apr. 17, 1998 Kampert-Durbin Letter”).)

6. On March 9, 1998, GTE field personnel, Messrs. Farmer and Davis, visited Mr. Wood and discovered that his home had been destroyed by a tornado that same day. They told Mr. Wood to call them when he had facilities with power, so that his telephone could be reconnected. (GTE Ex., Apr. 17, 1998 Kampert –Durbin Letter; PSC Ex., June 17,

1998 Talbott-Wood Letter.) Mr. Wood's recollection of that discussion differs. In a March 25, 1998 letter to the PSC, he stated: "I was shook up, after enduring the "eye" of the tornado, but my best memory was that they would return to hook me up to my trailer." (PSC Ex., Letter from C.W. Wood to FPSC, March 25, 1998.)

7. On March 23, 1998, GTE's Mr. Farmer made a field visit and noticed that Mr. Wood's private road was barricaded, indicating to him that Mr. Wood still did not have adequate facilities for connection of telephone service. (GTE Ex., Item 2, April 17, 1998 Kampert-Durbin Letter.)

8. Meanwhile, in a February 3, 1998, letter to GTE and the PSC, Mr. Wood stated that he would withhold payment for telephone service until he considered his service problems resolved. Such problems would be considered resolved, Mr. Wood wrote, when Mr. Perry could call him "on a regular basis." (PSC Ex., Letter from C. W. Wood to GTE, Feb. 3, 1998; see also PSC Ex., Apr. 24, 1998 Wood-Hendrix Letter ("I wish to reiterate that I will not consider my phone fixed until Mr. Perry is able to call me on a consistent basis"); PSC Ex., June 29, 1998 Wood-DeMello Letter ("I do not consider my telephone fixed until my neighbor, Mr. Perry can reach me on a regular and routine basis."))

9. On March 10, 1998, GTE mailed Mr. Wood a notice that his service would be disconnected for nonpayment if payment was not made by March 19. (GTE Ex., Item 6, Memo from D. Kampert, GTE, to S. Stokes, PSC, May 25, 1999.) Mr. Wood understood that he could have avoided disconnection by making payment arrangements for the outstanding balance. (Tr. v. 2, 73.) Nevertheless, he decided not to pay his bill. As such, GTE temporarily disconnected his service on March 25, 1998. On March 27, 1998, GTE's Sandy Hendrichs called Mr. Wood to advise him that his service would be permanently

disconnected if he failed to pay the outstanding balance. Mr. Wood stated that he would not pay his bill until he considered his repair issues resolved. Mr. Wood's balance at that time was \$664.02. On April 4, 1998, GTE permanently disconnected Mr. Wood's telephone service for nonpayment. (GTE Ex., Item 2, April 17, 1998 Kampert-Durbin Letter.)

10. On April 17, 1998, GTE offered to reconnect Mr. Wood's service with a toll block if he made payment arrangements for the outstanding balance. Mr. Wood refused, again stating he would not pay his bill until repair issues were resolved. On April 20, 1998, GTE restored service with a toll block anyway. GTE suspended normal collection procedures, including disconnection, until Mr. Wood's complaint could be closed. (GTE Ex., Item 2, April 17, 1998 Kampert-Durbin Letter.) In addition, GTE waived the \$55 reconnection charge that would normally be assessed. (GTE Ex., Item 5, May 26, 1999 Kampert-Stokes Email.)

11. GTE received Mr. Wood's payment of his \$651.87 outstanding balance on May 9, 1998. (Wood Ex., May 16, 1998 Telephone Bill.) Mr. Wood's toll service should have been restored after GTE received the payment, but the toll block was inadvertently left on. Mr. Wood never contacted GTE to inform the company of its error. Instead, Mr. Wood notified the PSC; on June 1, he filed a complaint concerning his disconnection and alleging GTE's failure to supply "minimal" service. (PSC Ex., June 1, 1998 Complaint, Wood vs. GTE.) The PSC contacted GTE. GTE restored Mr. Wood's toll service on June 4, 1998, and issued service credits for \$2.14 and \$1.65 on Mr. Wood's June bill relative to Mr. Wood's claims for time out-of-service. (GTE Ex., Item 5, May 26, 1999 Kampert-Stokes Email.)

12. Despite the toll block, Mr. Wood was able to make toll calls by using a calling card. (Tr. v. 2, 36.) After GTE discovered it had erroneously left the block on, it rerated all of the calling card calls to the rate that would have applied if Mr. Wood had been able to use his presubscribed carrier, and gave Mr. Wood appropriate credits. (Tr. v. 2, 99.)

13. In response to Mr. Wood's continued complaints about his inability to receive Mr. Perry's calls, the PSC tested both Mr. Wood's and Mr. Perry's telephone lines on May 29, 1998. Those tests revealed no network problems. (Tr. v. 1, 91-93, 140-41.) Instead, the PSC found that Mr. Perry repeatedly misdialed Mr. Wood's number during the call completion tests. (Tr. v. 1, 88-90, 141; GTE Ex., Item 1, Staff Rec. at 7; PSC Ex., Consumer Request; June 17, 1998 Talbott-Wood Letter ("Both GTE personnel and PSC personnel have observed Mr. Perry dialing your number incorrectly. Subsequent test calls made from Mr. Perry's home were completed with no problem."))

14. In an August 18, 1998 letter to the PSC's Mr. Plescow, Mr. Wood stated that Mr. Perry had reached him by telephone on August 6, 1998. (PSC Ex., Aug. 18, 1998 Wood-Plescow Letter.) Mr. Wood thus indicated that he considered his telephone fixed as of August 6, 1998. (PSC Ex., Letter from C.W. Wood to S. Stokes, PSC, June 8, 1999; Tr. v. 2, 71.) However, Mr. Wood still sought an informal conference. (PSC Ex., Aug. 18, 1998 Wood-Plescow Letter.)

15. At several points during Mr. Wood's dispute with GTE, Mr. Wood indicated that he was entitled to a \$25 SPG for every trouble report he made to GTE. (PSC Ex., Letter from C.W. Wood to PSC, April 8, 1998; PSC Ex., Letter from C. W. Wood to GTE, Feb. 3, 1998; PSC Ex., March 25, 1998 Wood-PSC Letter .) He stated: "The only issue in this matter is how much of the \$25.00 per complaint I was promised by GTE am I entitled

to.” (Letter from C.W. Wood to S. Stokes, PSC, June 3, 1999; see also PSC Ex., Letter from C.W. Wood to S. Stokes, June 8, 1999.) However, at the DOAH hearing, Mr. Wood repeatedly indicated that the issue was not money, but rather that he sought an order to compel GTE to provide adequate service to the customers on Schaefer Lane. (Tr. v. 1, 27-28 (“I don’t think there’s any real money involved in this that I can come up with”; “I don’t think this is really a money issue coming up before the Court today, but an attempt to get an order to require GTE to provide adequate service to the Schaefer Lane area.”) Mr. Wood understands that the Commission cannot award monetary damages. (PSC Ex., Consumer Request, at 5.)

16. GTE made a number of attempts to settle Mr. Wood’s complaint. On August 21, 1998, Mr. Wood told the PSC’s John Plescow that he would settle his complaint for three weeks’ out-of-service credit. GTE prepared a settlement agreement, offering \$25 credit (more than three weeks’ worth). GTE sent the agreement to Mr. Wood on August 25, 1998. On September 9, 1998, Mr. Wood told the PSC he would sign the agreement if a second line was installed with no problems. The line was installed to Mr. Wood’s satisfaction, and on September 10, he stated that he would send the signed agreement back that day. He did not; rather, on September 19, 1998, he signed the agreement, but modified it to state that it was “signed and tendered only without waiver of rights, of any kind.” (Wood Ex., Settlement Agreement, Complaint no. 1990221; PSC Ex., Letter from C.W. Wood to J. Plescow, PSC, Sept. 17, 1998; PSC Ex., Consumer Request at 3-4.) On September 25, GTE told the PSC it could not sign the agreement as modified. (PSC Ex., Consumer Request at 3-5, 9-10.)

17. On January 12, the Company again proposed a settlement agreement to Mr. Wood. (Wood Ex., Letter and attachment from D. Kampert to C.W. Wood, Jan. 12, 1999.) Eventually, Mr. Wood rejected the proposed agreement. (PSC Ex., Consumer Request, at 5; Tr. v. 2, 81.)

18. GTE made another attempt at settlement in an April 30, 1999, letter to Mr. Wood. GTE offered to credit Mr. Wood \$50, in addition to the other credits he had already received. (Wood Ex., Letter from D. Kampert to C.W. Wood, Apr. 30, 1999.) Once again, Mr. Wood eventually refused to sign the agreement. (GTE Ex., Item 8, Letter from D. Kampert to C.W. Wood, April 30, 1999; PSC Ex., Consumer Request, at 9-10.)

19. Finally, after this case was referred to DOAH, GTE offered Mr. Wood at least \$500, or a \$25 SPG for every time Mr. Wood said he had had trouble with his phone service, whether or not the reports were justified. Mr. Wood rejected this offer, as well. (Tr. v. 2, 76-77.) Mr. Wood testified that he never settled because he wanted the right to continue to pursue his complaint. (Tr. v. 2, 77.)

20. In total, GTE issued \$110.57 in service credits to Mr. Wood, including waiver of the \$55 reconnection charge after Mr. Wood was disconnected for not paying his bill, credit for time out-of-service, and SPGs. Mr. Wood's monthly local service rate is \$10.86, so one day's credit equals 36 cents. (GTE Ex., Item 1, Staff Rec. at 9-10.)

21. Based on Mr. Wood's monthly local rate, Staff calculates that the maximum Mr. Wood would be due for out-of-service credits is \$16.46. (GTE Ex., Item 1, Staff Rec. at 10.)

22. There were no complaints filed by any customer on Schaefer Lane in Lake Wales during the period at issue in Mr. Wood's complaint. In addition, Staff's investigation revealed no facilities problems in Mr. Wood's exchange area that would have prevented him from receiving calls from Mr. Perry or any other customer. (GTE Ex., Item 1, Staff Rec. at 7.)

CONCLUSIONS OF LAW

23. GTE's Commission-approved tariffs limit its liability for service interruptions to "a pro rata adjustment of the fixed monthly charges...for the service and facilities rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of twenty-four hours from the time it is reported to or detected by the Company." (GTE Ex., Item 12, General Services Tariff sec. A2.4.4.b(1).) As is customary for utilities, GTE cannot be required to pay damages related to service problems: "The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the Company...shall in no event exceed an amount equivalent to the proportionate charge to the subscriber for the period of service during which such mistake, omission, interruption, delay, error or defect occurs as provided in A2.4.4." (GTE Ex., Item 13, Gen. Services Tariff A2.5.1.a.)

24. In addition, GTE has voluntarily instituted a Service Performance Guarantee (SPG), under which a customer will be eligible for a \$25.00 credit for GTE's failure to meet a repair commitment. (GTE Ex., Item 13, Gen. Services Tariff A2.4.7.b.)

25. Although it is unclear what remedy Mr. Wood seeks in this case, to the extent that he seeks additional service credits or SPGs, they are unwarranted. Mr. Wood

appears to believe that an SPG is warranted every time a customer contacts GTE to report a problem, whether or not the Company detects any problem. That is not the case. The SPG, of course, assumes that there is a service problem that needs to be repaired. Otherwise, customers could continually obtain unjustified SPGs by continually reporting service trouble that didn't exist.

26. GTE responded to each trouble report made by Mr. Wood. In the few cases where it appeared some repair was warranted, GTE made the repair. In some cases, GTE took preventative measures even when no repair appeared necessary. (GTE Ex., Item 1, Staff Rec., at Att. 2; Tr. 80, 86.) In others, no access was provided to Mr. Wood's facilities. (GTE Ex., Item 1, Staff Rec., at Att 2; Tr. v. 1, 53-55, 193.) In the greatest number of instances in which Mr. Wood reported trouble, no service-affecting trouble was found or the problem was the result of customer error. (GTE Ex., Item 1 at Att. 2; Tr. v. 1, 165, 167, 181.) In particular, it appears that Mr. Wood's continuing problems with receiving Mr. Perry's calls were caused not by any defect in GTE's network, but by Mr. Perry's misdialing. As noted above, both GTE and PSC Staff observed Mr. Perry repeatedly misdialing Mr. Wood's telephone number.

27. In addition, the evidence suggests that Mr. Wood's perceived inability to receive calls may have been due to non-network problems, such as other devices on his line, including, at various times, a fax machine, computer, and answering machine. (Tr. v. 2, 55, 58; GTE Ex., Feb. 20, 1998 Kampert-Durbin Letter.) Mr. Wood has stated that, at times, he has forgotten to disconnect his fax machine from the line, and has forgotten to hook up his answering machine. (Tr. v. 2, 55; GTE Ex., Item 3, Kampert-Durbin Letter.) Conversely, it appears that Mr. Wood does not answer the phone at times even when he

is at home. Even when the PSC did its test calls from Mr. Perry's house and asked Mr. Wood to answer his phone, Mr. Wood's voice mail would sometimes answer. (Tr. v. 1, 88-89.) To this end, it has often been difficult for GTE and Commission Staff members to reach Mr. Wood by telephone because he doesn't answer. (See generally PSC Ex., Consumer Request; GTE Ex., Item 3, Feb. 20, 1998 Kampert-Durbin Letter).

28. There is no evidence of any problems in GTE's facilities that would have prevented Mr. Wood from receiving calls from any customer, (GTE Ex., Item 1, Staff Rec. at 7), and GTE had had no complaints from others on Schaefer Lane about wiring or other problems (Tr. v. 1, 169).

29. Staff is correct that GTE gave Mr. Wood adequate credits for instances where his service could have been interrupted. (Tr. v. 1, 92-94, 128; GTE Ex., Item 1, Staff Rec.) The credits GTE gave Mr. Wood amounted to 46 days of free service. This is likely well in excess of any time Mr. Wood's facilities were "rendered useless and inoperative...in excess of twenty-four hours," as GTE's tariff requires for application of a pro rata service credit. (GTE Ex., Item 12, Gen. Services Tariff A2.4.4.b.) Staff also noted that the SPGs GTE gave Mr. Wood as a goodwill measure were not justified.

30. When GTE found a condition that seemed to need repair, repairs were made within 24 hours in most cases. Where they may not have been, Mr. Wood received the aforementioned service credits. There is no evidence to support that Mr. Wood is entitled to service credits for a year or more, as he seems to believe. (Tr. v. 2, 81.)

31. This case concerns Mr. Wood's service problems. As noted, none of Mr. Wood's neighbors on Schaefer Lane filed any service complaints. (GTE Ex., Item 1, Staff Rec. at 7.) Staff's investigation in this case was thus necessarily confined to Mr. Wood's

complaints. Staff had no authority to include other people in Mr. Wood's complaint, and no duty to call individuals to ask about potential service problems. (Tr. v. 1, 62-63, 69-71, 142.) As such, there is no basis for DOAH or the Commission to issue an order concerning any customer's service other than Mr. Perry's.

32. In connection with his allegations about the quality of service in the Schaefer Lane area, Mr. Wood raises the allegation that GTE violated reporting requirements. The Commission Rules state that the Commission shall be informed of "major interruptions to service affecting an entire community or a substantial portion of a community" (F.A.C., sec. 25-4.023). There is no evidence of any such widespread outages involving Mr. Wood's area. (Tr. v. 1, 72.) Thus, GTE has not violated the outage reporting requirement.

33. There is no evidence that GTE's failure to remove Mr. Wood's toll block upon receiving payment for his delinquent balance was deliberate, as Mr. Wood claims. In any event, GTE's failure to promptly remove the toll block violated no Commission Rule, and neither the Company's tariffs nor the Commission's regulations provide for any recovery other than that which Mr. Wood has already received. It is important to note that Mr. Wood's ability to make toll calls was not affected by the presence of the toll block. Mr. Wood used a calling card to circumvent the block. Although it had no obligation to do so, GTE credited Mr. Wood the difference between the rates for the calling card calls he made and the rate he would have paid if he had been able to use his presubscribed carrier. (Tr. v. 2, 98-100.)

34. As the Commission Staff concluded, GTE's disconnection of Mr. Wood's service for nonpayment was justified. Under the Commission's regulations, the only constraint on GTE's ability to disconnect for nonpayment is if the bill amount is disputed.

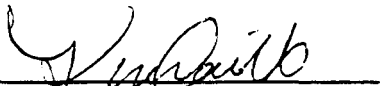
Mr. Wood never ~~dis~~puted the amount of the bill. Therefore, GTE had a right to disconnect his service when he refused to pay his bill. (Tr. v. 2, 115-16; GTE Ex., Item 1, Staff Rec. at 8, citing Rule 25-4.113(1)(f).)

35. Although Mr. Wood complained here of inability to use 911 service, he did not raise this allegation below. In any event, he has produced no evidence showing that he was unable to use 911 at any point, and it appears he never tried to call 911. (Tr. v. 2 at 61-63; Tr. v. 1, 122-123.) In addition, Commission rules state that 911 must be maintained while a customer is temporarily disconnected. (Rule 25-4.081; Tr. v. 1, 122.) There is no evidence that the Company violated this rule, and GTE has no obligation to maintain any service, including 911, when a permanent disconnect occurs. In any event, it appears that Mr. Wood's complaint about 911 service relates only to the time his house was destroyed by the tornado, when there would not have been facilities to provide telephone service of any kind. (Tr. v. 2 at 61-65.)

36. In summary, Mr. Wood is entitled to no relief from either the Commission or DOAH. GTE has violated no statutes or Commission Rules. The Company has already provided more than adequate compensation to Mr. Wood for any service outages he may have had, in accordance with its tariffs. In addition, GTE's disconnection of Mr. Wood for nonpayment was justified.

- GTE urges the Judge to adopt this Proposed Recommended Order.

Respectfully submitted on March 1, 2000.

By: 
Kimberly Caswell
P. O. Box 110, MC FLTC0007
Tampa, FL 33601
(813) 483-2617

Attorney for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of GTE Florida Incorporated's Proposed Recommended Order in Case No. 99-3595 (Docket No. 990861-TL) was sent via U.S. mail on March 1, 2000 to:

Donna Clemons, Staff Counsel
Florida Public Service Commission
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Tallahassee, FL 32399-0850

Mr. Calvin "Bill" Wood
10577 Schaefer Lane
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